WAR DEPARTMENT,

ADJUTANT GENERAL'S OFFICE,

Washington, July 15, 1864.

The PAYMASTER GENERAL, *U. S. Army*:—

SIR:—I enclose herewith a copy of an opinion of the Attorney General, dated July 14, 1864, as to the rates of pay to be allowed Colored Troops.

The Secretary of War directs that the Colored Troops in the service of the United States be paid in accordance with the determination of the Attorney General.

I am, sir, very respectfully,
Your obedient servant,

E. D. TOWNSEND,

Assistant Adjutant General.

ATTORNEY GENERAL'S OFFICE,
July 14, 1864.

To the PRESIDENT:—

SIR:—By your communication of the 24th ultimo, you require my opinion in writing as to what amounts of pay, bounty and clothing are allowed by law to persons of color who were free on the 19th day of April, 1861, and who have been enlisted and mustered into the military service of the United Stases between the month of December, 1862, and the 16th of June, 1864.

I suppose that whatever doubt or difficulty may exist with regard to the amount of pay and allowances to which the soldiers to whom you refer are entitled, has mainly its origin in the several provisions of the Act of July 17th, 1862, chap. 201, (12 st. 599,) relative to the employment and enrolment of persons of *African descent* in the service of the United States. The 12th section of that statute provides, "that the President be and he is hereby authorized to receive into the service of the United States, for the purpose of constructing entrenchments or performing camp service, or any other labor, or any military or naval service for which they may be found competent, persons of African descent; and such persons shall be enrolled and organized under such regulations, not inconsistent with the Constitution and laws, as the President may prescribe." The 15th section of the same statute enacts, that "persons of *African descent* who under this law shall be employed, shall receive ten dollars per month and one ration, three dollars of which monthly pay may be in clothing."

The first and main question, therefore, is, whether the persons of color referred to in your letter, who were mustered into the military service of the United States during the period of time which you indicate, are "persons of African descent" employed *under* the statute of July 17th, 1862, chap. 201. If they are not thus employed, their compensation should not be governed and is not regulated by the words of the 15th section of that statute, which I have just quoted.

Now, I think that it is clear—too clear indeed to admit of doubt or discussion—that those persons of color who have voluntarily enlisted, and have been mustered into our military service, who have been organized with appropriate officers into companies, regiments and brigades of soldiers, and who have done, and are doing, in the

field and in garrison, the duty and service of *soldiers of the United States*, are not persons of African descent employed *under* the statute to which I have referred.

I do not find indeed, in the Act any authority to enlist persons of *African descent* into the service, as *soldiers*. It will be observed that the said 12th section enumerates two kinds of employment for which those persons are authorized to be enrolled, namely:—*constructing intrenchments* and *performing camp service*. The section then contains a more general authority—authority to receive such persons into the service for the purpose of performing "any *other labor*, or any military or naval service for which they may be found competent." I am bound, however, by every rule of law respecting the construction of statutes, to construe these words of more general authority with reference to the character, nature and quality of the particular kinds of labor and service which are, in the first instance, specifically enumerated in the statute, as those for the performance of which persons of *African descent* are authorized to be received into the service; and therefore, I must suppose that Congress, when it conferred authority upon the President to receive into the service of the United States persons of *African descent*, for the purpose of performing any *other labor* or any military service for which they may be found competent, meant and intended that *other labor* and military service should be of the same general character, nature and quality as that which it had previously in the statute specially named and designated. "Always in statutes," says Coke, "relation shall be made according to the matter precedent." Dwarris says: "Sometimes words and sections are governed and explained by conjoined words and clauses: *noscitur a socio*." (Dwarris on statute 604.)

Applying these rules of construction then to the Act before me, I am constrained to hold, that if the authority to enlist and muster into the military service soldiers of African descent depended upon that statute, (as it does not,) it would furnish no foundation for such authority. It is manifest that the labor and service that United States soldiers are enlisted to perform, are of an essentially different character from, and are essentially of a higher nature, order and quality than those kinds of labor and service specifically named in the statute, and for the performance of which the President is specially authorized to employ "persons of African descent." In my

late opinion in the case of the claim of Rev. Samuel Harrison, for full pay as Chaplain of the 54th Regiment of Massachusetts Volunteers, I expressed the same view when I said, that the Act of July 17, 1862, chapter 201, "was not intended either to authorize the employment or to fix the pay of any persons of African descent, except those who might be needed to perform the humble offices of labor and service for which they might be found competent."

This view finds confirmation in a statute that received the approval of the President on the same day as the Act before me—the statute of July 17, 1862, Chapter 195, (12 statute 592,)—which conferred on the President authority to employ as many persons of African descent as he might deem necessary and proper for the suppression of the rebellion, and gave him power to organize and use them in such manner as he might judge best, for the public welfare. In these words we may find clear and ample authority for the enlistment of persons of African descent as United States soldiers. It is *under* this Act, if under either of the Acts of July 17, 1862, that colored volunteer soldiers may be said to have been employed. There is no need to resort therefore to the statute of July 17, 1862, chapter 201, for any authority with respect to their employment, or for any rule in regard to their compensation. Persons of *African descent* employed as soldiers are not embraced at all as I have shown by the Act of July 17, 1862, chapter 201, as objects or subjects of legislation; and we must therefore look to some other law for the measure of their compensation.

I find the law for the compensation of the *persons of color* referred to in your letter to me, in the Acts of Congress, in force at the dates of the enlistments of those persons, respecting the amount of pay and bounty to be given, and the amount and kind of clothing to be allowed to soldiers in the volunteer forces of the United States. For after a careful and critical examination, I believe, of every statute enacted since the foundation of the present Government relative to the enlistment of soldiers in the regular and volunteer forces of the United States, I have found no law which at any time prohibited the enlistment of free colored men into either branch of the national military service. The words of Congress, descriptive of the recruits competent to enter the service were, in the Act of April 30, 1790, "able bodied men not under five feet six inches in height without shoes; not under the age of eighteen nor above the age of

forty-five;" in the Act of March 3, 1795, "able-bodied of at least five feet six inches in height, and not under the age of eighteen nor above the age of forty-six years;" in the Act of March 3, 1799, "able-bodied and of a size and age suitable for the public service, according to the directions which the President of the United States shall and may establish;" in the Act of March 16, 1802, "effective able-bodied citizens of the United States of at least five feet six inches high and between the ages of eighteen and forty-five years;" in the Acts of December 24, 1811, January 11, 1812, January 20, 1813, and January 27, 1814, "effective able-bodied men;" in the Act of December 10, 1814, "free effective able-bodied men between the ages of eighteen and forty-five years;" and in the Act of January 12, 1847, "able-bodied men." Some of the foregoing statutes are obsolete; others of them are still in force, and furnished, before the suspension of the writ of habeas corpus, the rule by which the validity of the enlistments of persons alleged to have been minors, was every day tried in the State and Federal courts. They organized the military establishments of the United States in time of peace and in time of war. They embrace the periods of all the wars, previously to the present, in which the United States has been engaged. By no one of them was or is the enlistment of free colored men into the military service of the United States, whether as volunteers or as regulars, prohibited.

After the war of 1812, claims for bounty land preferred by persons of color who had enlisted and served in the army under the statutes of 24th December, 1811, January 11, 1812, and December 10, 1814, were sustained as valid by the then Attorney General, William Wirt, (1 Opin., 603.) And when I turn to more recent statutes—those which authorized the raising, and regulate the organization of the whole body of the volunteer forces now in the field, and provided for the maintenance and increase of the regular forces in the service—I discover throughout them no other statutory qualifications for recruits than those established by the earliest legislation to which I have referred.

It is not needed that I should specially recite the words of those acts of Congress that provide for the pay, bounty and clothing to be allowed to soldiers in the volunteer military service of the United States. It is enough to say that under the statutes relative to those subjects and in force during the period of time mentioned in

your communication, all volunteers competent and qualified to be members of the national forces, are entitled respectively to receive like amounts of pay, bounty and clothing from the Government.

In view, therefore, of the foregoing considerations, I give it to you unhesitatingly as my opinion that the *same* pay, bounty, and clothing are allowed by law to the persons of color referred to in your communication, and who were enlisted and mustered into the military service of the United States between the months of December, 1862, and the 16th of June, 1864, as are by the laws existing at the times of the enlistments of said persons, authorized and provided for, and allowed to *other* soldiers in the volunteer forces of the United States of like arms of the service.

I have the honor to be,

Very respectfully,

Your obedient servant,

EDW. BATES,

Attorney General.

Rates of Pay allowed Colored Troops.

Extract from "An Act making appropriations for the support of the army for the year ending the thirtieth June, eighteen hundred and sixty-five, and for other purposes:"

* * * * * * * *

SEC. 2. *And be it further enacted*, That all persons of color who have been or may be mustered into the military service of the United States shall receive the same uniform, clothing, arms, equipments, camp equipage, rations, medical and hospital attendance, pay and emoluments, other than bounty, as other soldiers of the regular or volunteer forces of the United States of like arm of the service, from and after the first day of January, eighteen hundred and sixty-four; and that every person of color who shall hereafter be mustered into the service shall receive such sums in bounty as the President shall order in the different States and parts of the United States, not exceeding one hundred dollars.

SEC. 3. *And be it further enacted*, That all persons enlisted and mustered into service as volunteers under the call, dated October seventeen, eighteen hundred and sixty-three, for three hundred thousand volunteers, who were at the time of enlistment actually enrolled and subject to draft in the State in which they volunteered, shall receive from the United States the same amount of bounty without regard to color.

SEC. 4. *And be it further enacted*, That all persons of color who were free on the nineteenth day of April, eighteen hundred and sixty-one, and who have been enlisted and mustered into the military service of the United States, shall, from the time of their enlistment, be entitled to receive the pay, bounty, and clothing allowed to such persons by the laws existing at the time of their enlistment. And the Attorney General of the United States is hereby authorized to determine any question of law arising under this provision. And if the Attorney General aforesaid shall determine that any of such enlisted persons are entitled to receive any pay, bounty, or clothing, in addition to what they have already received, the Secretary of War shall make all necessary regulations to enable the pay department to make payment in accordance with such determination.

Approved June 15, 1864.

CIRCULAR, No. 60.

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
Washington, August 1, 1864.

In pursuance of Section 4, of the Act of Congress making appropriations for the support of the Army for the year ending thirtieth of June, eighteen hundred and sixty-five, and for other purposes, approved July 4, 1864, all officers commanding regiments, batteries, and independent companies of colored troops, will immediately make a thorough investigation and individual examination of the men belonging to their commands, who were enlisted prior to January 1, 1864, with a view to ascertaining who of them were free men on or before April 19, 1861. The fact of freedom to be determined

in each case on the statement of the soldier, under oath, taken in connection with the most reliable information that can be obtained from other sources. And when, in view of all the facts in each case, commanding officers are of the opinion that any enlisted men of their commands were free on the date aforesaid, they will, upon the next muster rolls, enter the following remark opposite the names of such soldiers, viz: "Free, on or before April 19, 1861;" and such soldiers shall be mustered for pay accordingly. Such muster shall be authority for the Pay Department to pay said soldiers from the time of their entry into service to the 1st day of January, 1864, the difference between the pay received by them as soldiers under their present enlistments, and the full pay allowed by law at the same period to white soldiers.

By order of the Secretary of War:

E. D. TOWNSEND,

Assistant Adjutant General.